

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
et al.,

No. C 25-01780 WHA

Plaintiffs,

v.

UNITED STATES OFFICE OF
PERSONNEL MANAGEMENT, et al.,

Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR A
PROTECTIVE ORDER AND
SETTING FURTHER BRIEFING
SCHEDULE**

On March 20, 2025, plaintiffs noticed the deposition of OPM Acting Director Charles Ezell for April 3, 2025 (plaintiffs have also noticed depositions of chief human capital officers from the Departments of Agriculture, Commerce, Health and Human Services, Interior, Treasury, and Veterans Affairs). Plaintiffs now move “for a protective order relieving Defendants from the obligation to produce Charles Ezell for the deposition that Plaintiffs have noticed for April 3, 2025, and of any obligation to produce Mr. Ezell for any further deposition in this case” (Dkt. No. 158 at 2).

The deposition of defendant Ezell is, on the present record, premature. *See In re U.S. Dep't of Educ.*, 25 F.4th 692, 701 (9th Cir. 2022). Defendants' request for relief from “the obligation to produce Charles Ezell for the deposition that Plaintiffs have noticed for April 3, 2025,” (Dkt. No. 158 at 2), is **GRANTED**.

United States District Court
Northern District of California

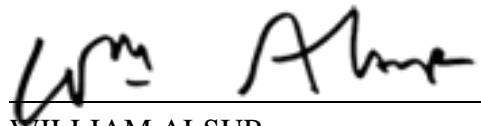
1 But defendants concede that there are circumstances under which an agency head may be
2 deposed (*id.* at 6–7). Defendants’ request for a protective order relieving them of “any
3 obligation to produce Mr. Ezell for any further deposition in this case” (*id.* at 2) is therefore
4 **DENIED.**

5 Should plaintiffs seek to depose defendant Ezell later, they shall file a motion with the
6 court requesting that deposition and explaining why it is justified.

7 Relatedly, defendants argue that “this is an APA case,” and that discovery must therefore
8 be limited to an “administrative record” (Dkt. No. 158 at 7). The parties shall please brief the
9 extent to which aspects of this action must be adjudicated on an “administrative record,” if any,
10 and the extent to which other aspects of this action must be adjudicated on a trial or summary
11 judgment record with the benefit of formal discovery. Simultaneous briefs shall be submitted
12 by **TUESDAY, APRIL 1, 2025, AT NOON**. Simultaneous replies shall be submitted by
13 **SATURDAY, APRIL 5, 2025, AT NOON**.

14
15
16 **IT IS SO ORDERED.**

17
18 Dated: March 28, 2025.

19
20
21 
22 WILLIAM ALSUP
23 UNITED STATES DISTRICT JUDGE

24
25
26
27
28